FY 2013 PDUFA
FINANCIAL REPORT

REQUIRED BY THE

PRESCRIPTION DRUG USER FEE ACT

AS AMENDED

FOOD AND DRUG ADMINISTRATION

DEPARTMENT OF HEALTH AND HUMAN SERVICES

EXECUTIVE SUMMARY

The Prescription Drug User Fee Act of 1992 (PDUFA), as amended, requires the Food and Drug Administration (FDA or the Agency) to report annually on the financial aspects of its implementation of the Act. Required under PDUFA, this report covers fiscal year (FY) 2013.

PDUFA, as amended, specifies that the following three legal conditions must be satisfied each year for FDA to collect and spend PDUFA user fees:

1. FDA's overall Salaries and Expenses Appropriation, excluding fees, must equal or exceed FDA's overall FY 1997 Salaries and Expenses Appropriation, excluding fees and adjusted for inflation.

2. The fee amounts FDA may collect must be provided in appropriation acts.

3. FDA must spend at least as much from appropriated funds for the review of human drug applications as it spent in FY 1997, adjusted for inflation.

This report explains how FDA met these three legal conditions in FY 2013. The statements and tables in the report provide data on prescription drug user fee collections, expenditures, and carryover balances, as well as comparative data from earlier periods.

In FY 2013, FDA collected $728.6 million in prescription drug user fees, spent $666.9 million in user fees for the human drug review process, and carried a cumulative balance of $240.2 million forward for future fiscal years.

PDUFA user fees and appropriations in FY 2013 supported 3,655 full-time equivalents (FTEs), including salary and operational expenses, to support the process for the review of human drug applications.

Challenges FDA faces in FY 2014 include implementing the new programs and initiatives for the human drug and biologic review process agreed to in PDUFA V. FDA will continue to spend user fees to enhance the review program and to improve communications to meet the performance goals associated with this program.

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BACKGROUND

The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by PDUFA, authorizes FDA to collect fees from the pharmaceutical industry to augment appropriations spent on FDA's human drug review process. FDA spends fee revenues and appropriations to hire, support, and maintain personnel for the review of human drug applications to help ensure that safe and effective prescription drugs reach the American public more quickly.

The PDUFA was amended and extended in 1997 (PDUFA II), 2002 (PDUFA III), 2007 (PDUFA IV), and 2012 (PDUFA V) with the support of the pharmaceutical industry, public stakeholders, and the Administration.

FY 2013 was the first year authorized under PDUFA V. Under PDUFA V, application fees, establishment fees, and product fees each contribute one-third of the total fee revenues in a fiscal year. An application fee must be collected when certain new drug applications (NDAs) or biologics license applications (BLAs) are submitted. Product and establishment fees are due annually on October 1. The total annual fee revenue amounts set in statute for PDUFA V, after a base workload adjustment, must be further adjusted for annual changes in drug review workload and for inflation.

PDUFA V requires FDA to submit a performance report and a financial report to Congress no later than 120 days after the end of each fiscal year. The FY 2013 PDUFA Performance Report that describes FDA's progress in meeting the goals referred to in PDUFA V is being transmitted separately to Congress. This report is the FY 2013 PDUFA Financial Report, which addresses the implementation and use of prescription drug user fees by FDA during the period of October 1, 2012, through September 30, 2013.

As required under PDUFA, this report presents the legal conditions that must be satisfied for FDA to collect and spend prescription drug user fees each year and shows how FDA determined that it met those requirements. In addition, this report presents summary statements of FY 2013 fee collections, carryover balances, obligations of user fees, and total costs of the process for the review of human drug applications from both fees and appropriations.

MEETING THE LEGAL CONDITIONS FOR USER FEES IN FY 2013

PDUFA imposes three legal conditions that FDA must satisfy in order to collect and spend prescription drug user fees. A summary of how each of these legal conditions was satisfied in FY 2013 is shown below. Detailed explanations and calculations are described in Appendix A.

The first legal condition – FDA's overall Salaries and Expenses Appropriation (excluding user fees and rental payments to the General Services Administration (GSA)) must meet or exceed FDA's FY 1997 Salaries and Expenses Appropriation (excluding user fees and rental payments to GSA), multiplied by the adjustment factor. In FY 2013, FDA's appropriation for salaries and expenses was $2,347,014,000, excluding user fees and rent payments to GSA. FDA's FY 1997 Salaries and Expenses Appropriation excluding user fees and rent was $1,172,827,000 (rounded to the nearest thousand dollars), after applying the adjustment factor. Therefore, the first legal condition was satisfied.

The second legal condition – The amount of user fees collected for each fiscal year must be provided in that year's appropriation acts. The President signed the Consolidated and Further Continuing Appropriations Act, 2013 (Public Law 113-6) on March 26, 2013. It specified that $718,669,000 shall be derived from prescription drug user fees, and that prescription drug user fees collected in excess of this amount are also appropriated for FDA. Therefore, the second legal condition was satisfied.

The third legal condition – User fees may be collected and used only in years when FDA spends a specified minimum amount of appropriated funds (exclusive of user fees) for the review of human drug applications. This specified minimum is the amount FDA spent on the review of human drug applications from appropriations (exclusive of user fees) in FY 1997, multiplied by the adjustment factor. The specified minimum level for FY 2013 is $211,631,000 (rounded to the nearest thousand). In FY 2013, FDA obligated $299,267,407 from appropriations (exclusive of user fees) for the review of human drug applications. Because FDA spent more than the specified minimum amount in FY 2013, the third legal condition was satisfied.

USER FEE COLLECTIONS

PDUFA specifies that user fees shall be collected for prescription drug applications and annual fees shall be collected for establishments and products. The statute further specifies how the fees must be calculated each fiscal year, including annual adjustments that must be made for inflation and changes in workload.

Under PDUFA, fees collected and appropriated, but not spent by the end of a fiscal year, continue to remain available for FDA to spend in future years. The balances carried over from year to year are described on page 7.

Table 1 provides totals of user fees collected during the past two fiscal years, and also reflects the amount of open receivables.

TABLE1: PRESCRIPTION DRUG USER FEE COLLECTIONS AND RECEIVABLES BY FEE SOURCE AS OF SEPTEMBER 30, 2013

FEES COLLECTED	FY 2012	FY 2013
Application Fees	$222,862,167	$245,451,430
Establishment Fees	$241,989,667	$231,013,962
Product Fees	$244,339,450	$215,292,673
TOTAL COLLECTIONS	$709,191,284	$691,758,065
FEES RECEIVABLE		
Application fees	$0	$0
Establishment Fees	$4,268,807	$5,353,792
Product Fees	$1,088,760	$1,475,700
TOTAL RECEIVABLES	$5,357,567	$6,829,492

Numbers may not add due to rounding to the nearest dollar

The receivables for FY 2012 and FY 2013 are from uncollected application, product, and establishment fees. After 90 days of attempting to collect the delinquent debt, FDA turns these receivables over to the Program Support Center (PSC), Department of Health and Human Services, for further attempts at collection. After 180 days of the debt being outstanding, PSC will turn the debt over to the United States Treasury for further collection efforts.

User fee collections are reported in the year the fee was originally due – referred to as the cohort year. For example, a fee originally due in FY 2012, even if it is received in FY 2013, is attributed to FY 2012 collections. Totals reported for each fiscal year are net of any refunds for the cohort year. FDA issues invoices for product and establishment fees twice a year: in August for fees due on October 1, and in November after the close of the fiscal year for product and establishment fees due that were not previously billed and paid. To ensure the quality of the information provided in the financial report, FDA updates prior year numbers each year. In FY 2013, fees collected for the FY 2012 cohort year increased by $37,245,257 over the $671,946,027, which was reported in the FY 2012 financial report. This increase is due to the collection of receivables after the end of the fiscal year, as well as to the collection of fees submitted in response to the annual “clean-up” invoices sent out after the close of the fiscal year, for product and application fees that were not invoiced at the beginning of the year.

USER FEE OBLIGATIONS

User fees may be expended only for costs necessary to support the process for the review of human drug applications, as defined in PDUFA. Allowable and excludable costs for the process for the review of human drug applications are described in Appendix C.

In FY 2013, FDA obligated $666,901,600 from prescription drug user fees. Table 2 provides a breakout of user fee obligations by expense category during the past two fiscal years.

TABLE 2: PRESCRIPTION DRUG USER FEE OBLIGATIONS BY EXPENSE CATEGORY AS OF SEPTEMBER 30, 2012 AND SEPTEMBER 30, 2013

EXPENSE CATEGORY	FY 2012	FY 2013
Personnel Compensation and Benefits	$417,261,313	$435,684,523
Travel and Transportation	$6,527,641	$4,936,201
Rent	$18,741,600	$23,574,700
Communications	$9,179,407	$9,660,391
Contract Services	$171,262,538	$171,499,086
Equipment and Supplies	$13,420,863	$15,851,593
Other[1]	$535,439	$5,695,106
TOTAL OBLIGATIONS	**$636,928,801**	**$666,901,600**

[1]Other includes expenses from categories such as rent payments to others, printing & reproduction, grants, and other miscellaneous expenses.

FDA dedicated 1,277 FTEs to the process for the review of human drug applications in FY 1992, before PDUFA was enacted. In FY 2013, PDUFA fees and appropriations paid for a total of 3,655 FTEs; an increase of 2,378 FTEs over FY 1992 levels for the review process. Employee salary and benefits paid from user fees in FY 2013 totaled approximately 65 percent of the obligations from fees.

Table 3 below provides additional information on FDA's IT obligations for the process for the review of human drug applications. The table highlights IT obligations for Center IT systems and IT systems that are common across the organizations participating in the human drug review process. For each of these expense categories, FDA's IT spending is further itemized by funding source, PDUFA user fee or congressional appropriation (S&E), and purpose, systems development or maintenance.

TABLE 3: FY 2013 IT OBLIGATIONS BY IT CATEGORY AND FUNDING SOURCE AS OF SEPTEMBER 30, 2013

IT EXPENSE CATEGORY	S&E	PDUFA	Total	Development	Maintenance
Center IT Systems	$6,402,244	$9,238,931	$15,641,175	$4,370,642	$11,270,533
Common IT Systems[1]	$17,148,148	$40,761,038	$57,909,186	$15,269,894	$42,639,292
TOTAL OBLIGATIONS	**$23,550,392**	**$49,999,969**	**$73,550,361**	**$19,640,536**	**$53,909,825**

[1] IT systems common across organizational divisions participating in the process for the review of human drug applications

See the section entitled, TOTAL COSTS OF THE PROCESS FOR THE REVIEW OF HUMAN DRUG APPLICATIONS, on page 11, for more discussion on the total human drug review process costs.

CARRYOVER BALANCES

Under PDUFA, fees collected, appropriated, and not obligated at the end of a fiscal year remain available to FDA in future fiscal years. They are referred to as carryover balances. The operations in FY 2013 resulted in a net increase of the carryover balance of $61,694,172, from $178,468,707 to $240,162,879. This increase resulted from several factors, including sequestration and prior year collections. Table 4 captures FDA's carryover balances at the beginning and end of each fiscal year since the enactment of PDUFA in FY 1992.

TABLE 4: PRESCRIPTION DRUG USER FEE COLLECTIONS, OBLIGATIONS, AND CARRYOVER BALANCES BY FISCAL YEAR

FISCAL YEAR	BEGINNING CARRYOVER	NET COLLECTION	OBLIGATIONS	YEAR-END CARRYOVER
1993	-	$28,531,996	$8,949,000	$19,582,996
1994	$19,582,996	$53,730,244	$39,951,020	$33,362,220
1995	$33,362,220	$70,953,500	$74,064,015	$30,251,705
1996	$30,251,705	$82,318,400	$85,053,030	$27,517,075
1997	$27,517,075	$93,234,125	$84,289,046	$36,462,154
1998	$36,462,154	$132,671,143	$101,615,000	$67,518,297
1999	$67,518,297	$126,580,456	$122,515,000	$71,583,753
2000	$71,583,753	$133,060,339	$147,276,000	$57,368,092
2001	$57,368,092	$138,761,294	$160,713,000	$35,416,386
2002	$35,416,386	$149,078,939	$161,812,100	$22,683,225
2003	$22,683,224	$209,667,051	$200,154,500	$32,159,776
2004	$32,195,776	$251,617,821	$232,081,500	$51,732,097
2005	$51,732,097	$283,491,495	$269,433,800	$65,789,792
2006	$65,789,792	$315,502,786	$305,644,137	$75,648,440
2007	$75,648,440	$375,597,273	$320,429,620	$130,816,093
2008	$130,816,093	$485,165,229	$450,786,835	$165,194,487
2009	$165,194,487	$518,992,651	$512,051,400	$172,135,738
2010	$172,135,738	$551,734,260	$573,258,400	$150,611,598
2011	$150,611,598	$592,812,496	$627,826,409	$115,597,685
2012	$115,597,685	$699,799,823	$636,928,801	$178,468,707
2013	$178,468,707	$728,595,772	$666,901,600	$240,162,879

Numbers may not add due to rounding to the nearest dollar

In addition to the year beginning and year end carryover balances, Table 4 also reflects the amount of fees collected net of any refunds or other adjustments that occurred during each fiscal year, for all cohort years combined, and the amount obligated during the fiscal year. The numbers do not include any accounts receivable. Therefore the numbers for FY 2012 and FY

2013 are different from the numbers in Table 1, which reflect the total net collections for the cohort years only.

COLLECTIONS REALIZED AND OFFSET

Under PDUFA V, if cumulative collections for FY 2013 through FY 2015, plus an estimate of collections for FY 2016, exceed the fee revenue amounts specified in the appropriation acts for that period, FDA will be required to reduce the fee rates for FY 2017 by the cumulative amount that fees exceeded the amounts specified in appropriations during that period.

Table 5 depicts fee collections realized each fiscal year, collection amounts specified in the appropriations act, and offset amounts made when fees for FY 2007 and FY 2012 were set. No additional offsets are to be made under PDUFA V until FDA sets fees for FY 2017 in August 2016.

TABLE 5: PRESCRIPTION DRUG USER FEES COLLECTED, COLLECTION AMOUNTS SPECIFIED IN APPROPRIATIONS ACTS, AND OFFSET AMOUNTS AS OF SEPTEMBER 30, 2013

FISCAL YEAR	COLLECTIONS REALIZED	COLLECTION AMOUNT SPECIFIED IN APPROPRIATIONS ACT	AMOUNT IN EXCESS OF COLLECTION AMOUNT SPECIFIED IN APPROPRIATIONS ACT
1998	$117,849,016	$117,122,000	$727,016
1999	$125,729,367	$132,273,000	-
2000	$141,134,682	$145,434,000	-
2001	$138,421,429	$149,273,000	-
2002	$141,408,975	$161,716,000	-
2003	$218,302,684	$222,900,000	-
2004	$258,333,700	$249,825,000	$8,508,700
2005	$287,178,231	$284,394,000	$2,784,231
2006	$313,541,278	$305,332,000	$8,209,278
2007	$370,560,934	$352,200,000	$18,360,934
Collections Exceeding Amounts Specified in Appropriations Acts through FY2007			$38,590,159
Excess collections offset under 736(g)(4) when fees for FY 2007 were set			$7,957,922
Excess collections offset under 736(g)(4) when fees for FY 2013 were set			$30,974,959
2008	$478,184,756	$459,412,000	$18,772,756
2009	$531,874,297	$510,665,000	$21,209,297
2010	$557,153,988	$578,162,000	($21,008,012)
2011	$593,264,939	$667,057,000	($73,792,061)
2012	$709,191,284	$702,172,000	$7,019,284
Collections FY 2008-2012 Compared to Amounts Specified in Appropriations Acts			($47,798,736)
2013	$691,758,065	$718,669,000	($26,910,935)
Net Balance to be Offset When Fees Are Set for FY 2017			$0

As discussed on page 3, previous cohort year collections realized in FY 2013 have been updated from last year's report. The update reflects net collections for each cohort year through September 30, 2013. Cohort year fees collected subsequent to September 30, 2013, will be reported in the FY 2014 Financial Report. As Table 5 demonstrates, of the PDUFA V fee revenue collected to date, none of the fees collected are in excess of fee amounts specified in appropriations acts, and therefore no reserve for future collection offset is necessary at this time.

RESERVES AND BALANCE AVAILABLE FOR ALLOCATION

Table 6 provides a summary of carryover balances as of September 30, 2013, and anticipated claims on those balances.

Prudent operations also require that a reserve be kept aside for potential refunds. For that purpose a total of $5,000,000 is being set aside. An additional $27,590,900 is set aside for the Agency's move to White Oak. Additionally, the amount of collections appropriated for FY 2013 but sequestered under the Balanced Budget and Emergency Deficit Control Act of 1985, as amended by the Budget Control Act of 2011, totaled $34,166,383; these funds are deemed unavailable for obligation.[1] Subtracting these four reserve amounts from carryover balances leaves a total remaining carryover balance of $173,405,596.

TABLE 6: SUMMARY STATEMENT OF PRESCRIPTION DRUG USER FEE CARRYOVER BALANCE AND ANTICIPATED CLAIMS ON THEM AS OF SEPTEMBER 30, 2013

STATUS OF CARRYOVER FUNDS	AMOUNT
Total Carryover Balance	$240,162,879
Reserve for Future Collection Offset	($0)
Reserve for Refunds	($5,000,000)
Reserve for move to White Oak	($27,590,900)
Reserve for FY 2013 Sequestered Collections	($34,166,383)
Remaining Carryover Balance	**$173,405,596**

PDUFA V authorizes FDA to have up to three months of available carryover balance at the end of FY 2017. FDA currently estimates that operations will require approximately $71,003,000 per month for the first three months of FY 2018, and that the remaining carryover balance available ($173.4 million) could fund 2.4 months of operations in FY 2018. The current status of FDA's ability to access and obligate the funds in the remaining carryover balance remains uncertain.

[1] This report provides information on user fee balances as of the end of FY 2013. We note that, after the end of FY 2013, Congress enacted legislation that makes the FY 2013 sequestered user fees available for obligation by FDA. See section 747 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2014 (Public 113-76).

TOTAL COSTS OF THE PROCESS FOR THE REVIEW OF HUMAN DRUG APPLICATIONS

Table 7 shows the costs for the review of human drug applications during the past two fiscal years by FDA organizational component. It depicts the full cost of the process for the review of human drug applications paid from appropriations and user fees. The table displays data for the Center for Drug Evaluation and Research (CDER), Center for Biologics Evaluation and Research (CBER), Office of Regulatory Affairs (ORA) and FDA Headquarters (HQ).

TABLE 7: PROCESS FOR THE REVIEW OF HUMAN DRUG APPLICATIONS – TOTAL COST AS OF SEPTEMBER 30, 2012 AND SEPTEMBER 30, 2013

FDA COMPONENT	FY 2012	FY 2013
CDER	$714,461,517	$661,662,397
CBER	$201,589,189	$191,204,309
ORA	$37,186,485	$31,508,236
HQ	$79,182,027	$81,794,065
TOTAL PROCESS COSTS	**$1,032,419,218**	**$966,169,007**
Obligations from Appropriations	$395,490,417	$299,267,407
Obligations from Prescription Drug User Fees	$636,928,801	$666,901,600

Of the total of $966.169.007 obligated in FY 2013 for the process for the review of human drug applications as defined in PDUFA, about 69 percent came from PDUFA user fees and about 31 percent came from appropriations.

In FY 2013, the total costs for the process for the review of human drug applications decreased by about 6 percent from the cost for the process in FY 2012, mostly due to the impact of funding uncertainty in the first six months of the fiscal year, and the impact of the sequester.

The next three tables are new to the financial report this year, and are an attempt to provide some additional trend analysis in response to suggestions from FDA stakeholders.

Table 8 shows the total spending on the drug review process by major FDA component over the past ten years. The percentage spent in the various FDA components has remained essentially stable over time.

TABLE 8: PROCESS FOR THE REVIEW OF HUMAN DRUG APPLICATIONS – TOTAL SPENDING BY MAJOR ORGANIZATIONAL COMPONENT FROM FY 2004

FY	Total Spent	Spent by CDER	CDER %	Spent by CBER	CBER %	Spent by ORA	ORA %	Spent by HQ	HQ %
2004	$436,856,536	$293,991,408	67	$91,905,443	21	$19,646,087	5	$31,313,598	7
2005	$480,952,183	$332,515,484	69	$94,765,165	20	$22,590,258	5	$31,081,277	6
2006	$524,303,323	$363,449,183	69	$103,800,146	20	$23,260,052	5	$33,793,942	6
2007	$575,005,992	$385,939,977	67	$122,871,873	21	$25,860,072	5	$40,334,070	7
2008	$713,900,390	$493,748,819	69	$145,080,623	20	$27,811,039	4	$47,259,909	7
2009	$855,426,294	$585,414,578	68	$170,363,705	20	$36,509,080	4	$63,138,931	8
2010	$931,845,581	$640,509,784	69	$176,353,112	19	$34,968,204	4	$80,014,481	8
2011	$1,025,621,707	$719,677,685	70	$199,895,537	20	$37,783,238	4	$68,265,247	6
2012	$1,032,419,218	$714,461,517	69	$201,589,189	20	$37,186,485	4	$79,182,027	7
2013	$966,169,007	$661,662,397	68	$191,204,309	20	$31,508,236	3	$81,794,065	9

Numbers may not add due to rounding

FDA strives to maintain a low overhead cost for the process for the review of human drug applications. Agency general and administrative costs were approximately 8.5 percent of total spending in FY 2013. The development of the costs associated with the process for the review of human drug applications is described in more detail in Appendix D.

Table 9 provides historical data on the FTEs used in the process for the review of human drug applications by major FDA component.

TABLE 9: PROCESS FOR THE REVIEW OF HUMAN DRUG APPLICATIONS – TOTAL FTE USED AS OF SEPTEMBER 30, OF EACH FISCAL YEAR

Component/FY	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
CDER	1,740	1,695	1,811	1,809	1,912	2,344	2,552	2,666	2,636	2,450
CBER	499	488	501	574	610	658	710	722	740	748
ORA	150	148	151	163	165	217	192	198	183	166
HQ	219	215	231	191	238	307	306	291	295	290
Total	**2,608**	**2,546**	**2,691**	**2,738**	**2,925**	**3,526**	**3,760**	**3,877**	**3,854**	**3,655**

Numbers may not add due to rounding

Table 10 provides the total amount spent on the drug review process for the last 10 years, and the amount and percent of that total that is derived from fees and from new budget authority.

TABLE 10: PROCESS FOR THE REVIEW OF HUMAN DRUG APPLICATIONS – TOTAL SPENDING FROM FEES AND BUDGET AUTHORITY AS OF SEPTEMBER 30, OF EACH FISCAL YEAR

Fiscal Year	Total Spent	Spent from Budget Authority	Budget Authority Percent	Spent from PDUFA Fees	PDUFA Fee Percent
2004	$436,856,536	$204,775,036	47%	$232,081,500	53%
2005	$480,952,183	$211,518,383	44%	$269,433,800	56%
2006	$524,303,323	$218,659,186	42%	$305,644,137	58%
2007	$575,005,992	$254,576,372	44%	$320,429,620	56%
2008	$713,900,390	$263,113,555	37%	$450,786,835	63%
2009	$855,426,294	$343,374,894	40%	$512,051,400	60%
2010	$931,845,581	$358,587,181	38%	$573,258,400	62%
2011	$1,025,621,707	$397,795,307	39%	$627,826,400	61%
2012	$1,032,419,218	$395,490,417	38%	$636,928,801	62%
2013	$966,169,007	$299,267,407	31%	$666,901,600	69%

MANAGEMENT CHALLENGES FOR FY 2014

On July 9, 2012, the President signed the Food and Drug Administration Safety and Innovation Act (FDASIA) into law. Title I of FDASIA includes the fifth authorization of PDUFA (PDUFA V). The new law ensures that FDA will continue to receive this additional source of stable and consistent funding during FY 2013-2017, enabling FDA to protect and promote public health by helping to bring critical new medicines to market.

PDUFA V addressed many of the top priorities identified by public stakeholders, the top concerns identified by industry, and the most important challenges identified within FDA. PDUFA V enhancements included increased interaction during regulatory review of New Molecular Entity New Drug Applications (NME NDAs) and original Biologics License Applications (BLAs); regulatory science enhancements to expedite drug development; the development of important new guidance for industry on such topics as Risk Evaluation and Mitigation Strategies and best practices for conducting meta-analyses; a commitment to develop a structured framework for benefit-risk assessment; various enhancements to the drug safety system; and requirements for electronic submissions and standardization of electronic application data. This additional work was funded by a 6 percent increase in PDUFA user fees.

Under the Budget Control Act of 2011, $34.2 million of the PDUFA user fees collected in FY 2013 were sequestered and not available for obligation (see Footnote 1 on page 10). FDA's work over the past year in implementing PDUFA V and the additional requirements in FDASIA such as the new breakthrough therapy program has all been accomplished by our 2012 PDUFA staffing level, not the staffing level deemed necessary for this work. Nonetheless, the committed public health professionals at FDA have made significant and steady progress in meeting these commitments and statutory requirements. For example, the new review program for NMEs and Original BLAs and our enhanced communication with sponsors during drug development were both open for business on October 1, 2012. FDA also published a draft implementation plan for a structured approach to benefit-risk assessment, a guidance on our expedited drug review programs, and we conducted four public meetings during FY 2013 under our Patient-Focused Drug Development initiative.

While FDA's accomplishments in FY 2013 are important and promise to have long-term positive impacts on public heath, we look forward to the future when FDA has access to the total amount of user fee funding that is intended to support the agency's work.

APPENDIX A: CONDITIONS FOR ASSESSMENT AND USE OF FEES

The FD&C Act, as amended by PDUFA, specifies three legal conditions that must be met each fiscal year for FDA to collect and spend prescription drug user fees. A summary of the legal conditions was introduced on page 2 of this report. This appendix provides detailed descriptions of these conditions and explanations of how FDA met these conditions in FY 2013.

To determine whether the legal conditions are satisfied, FDA must calculate and incorporate adjustment factors (defined in section 735(8) of the FD&C Act as amended) in the assessments of the first and third conditions. The FD&C Act states:

> The term 'adjustment factor' applicable to a fiscal year is the Consumer Price Index for all urban consumers (all items, United States city average) for October of the preceding fiscal year divided by such Index for October 1996.

The consumer price index (CPI) for October 2011, the October of the fiscal year preceding FY 2013, was 226.421. The CPI for October 1996 was 158.3. Dividing the CPI of October 2011 by the CPI of October 1996 yields an adjustment factor of 1.430328 (rounded to the sixth decimal place) for FY 2013.

The **first legal condition** is found in section 736(f)(1) of the FD&C Act. It states that fees:

> Shall be refunded for a fiscal year beginning after FY 1997 unless appropriations for salaries and expenses of the Food and Drug Administration for such fiscal year (excluding the amount of fees appropriated for such fiscal year) are equal to or greater than the amount of appropriations for the salaries and expenses of the Food and Drug Administration for the fiscal year 1997 (excluding the amount of fees appropriated for such fiscal year) multiplied by the adjustment factor applicable to the fiscal year involved.

The first condition requires that FDA's FY 2013 Salaries and Expenses Appropriation (excluding user fees and rent payments to GSA) be greater than or equal to FDA's Salaries and Expenses Appropriation (excluding user fees and rent payments to GSA) for FY 1997 multiplied by the adjustment factor for inflation. FDA's Salaries and Expenses Appropriation (excluding user fees and rent payments to GSA) for FY 1997 was $819,971,000. Multiplying this amount by the adjustment factor of 1.430328 equals $1,172,827,000 (rounded to the nearest thousand dollars).

In FY 2013, Congress appropriated $2,347,014,000 to FDA for salaries and expenses, excluding user fees and rent payments to GSA. Because the FY 2013 Salaries and Expenses Appropriation is greater than the adjusted FY 1997 Salaries and Expenses Appropriation, $1,172,827,000, the first legal condition was met.

The **second legal condition** is described in section 736(g)(2)(A)(i) and states that fees:

> Shall be collected and available in each fiscal year in an amount not to exceed the amount specified in Appropriation Acts, or otherwise made available for obligation, for such fiscal year….

On March 26, 2013, the President signed the Consolidated and Further Continuing Appropriations Act, 2013, Public Law 113-6, which specified that $718,669,000 shall be derived

from prescription drug user fees, and that prescription drug user fees collected in excess of this amount are also appropriated for FDA. Therefore, the second legal condition was met.

The **third legal condition** is defined in section 736(g)(2)(A)(ii); it states that fees:

> Shall be available to defray increases in the costs of the resources allocated for the process for the review of human drug applications (including increases in such costs for an additional number of full-time equivalent positions in the Department of Health and Human Services to be engaged in such process) over such costs, excluding costs paid from fees collected under this section, for fiscal year 1997 multiplied by the adjustment factor.

The third condition requires a minimum spending from appropriations, excluding user fees, on the process of human drug application review. The minimum spending from appropriations is the amount that FDA spent on the process for the review of human drug applications in FY 1997, multiplied by the adjustment factor.

In FY 1997, the amount spent from appropriations on the process for the review of human drug applications was $147,959,689. After applying the adjustment factor of 1.430328 (rounded to sixth decimal place), the minimum appropriation spending level for the process for the review of prescription drug applications for FY 2013, excluding user fees, is $211,631,000 (rounded to the nearest thousand dollars).

In FY 2013, FDA obligated $299,267,407 from appropriations, exclusive of user fees, for the process for the review of human drug applications, which exceeds the specified minimum appropriation spending level. Therefore, the third legal condition was met.

APPENDIX B: WAIVERS AND EXEMPTIONS

PDUFA directed FDA to waive or reduce fees in five different circumstances:

- when a waiver is necessary to protect the public health;
- when a fee is a significant barrier to innovation;
- when the fees paid exceed FDA's costs of reviewing a firm's prescription drug applications;
- when imposition of the fee creates an inequity between certain 505(b)(1) and 505(b)(2) prescription drug applications (this waiver provision was deleted in PDUFA III); and
- when a sponsor withdraws a pending prescription drug application after FDA has filed it, but before FDA has performed substantial work on the marketing application.

Beginning in FY 1998, PDUFA II also provided a waiver, for certain small businesses, of the full application fee for the first application submitted.

In addition, under PDUFA II, new exemptions from application fees were added beginning in FY 1998. These specific exemptions are automatic and do not require a waiver request. They include:

- prescription drug applications for designated orphan products (designated for rare diseases or conditions affecting fewer than 200,000 patients in the United States); and
- supplemental applications for pediatric indications for use (statutorily repealed by section 5 of Public Law 107-109, effective January 4, 2002).

The increased number of exemptions required by PDUFA II reduced the number of applications that require the payment of fees. Fees may be waived or reduced under the waiver provisions of the statute. Many of the application fee waiver requests FDA received through FY 1997 pertained to orphan products; since designated orphan products are now given automatic exemptions, the number of waiver requests for application fees has decreased substantially.

Beginning in FY 2008, PDUFA IV provided exemptions for product fees and establishment fees for certain approved orphan products (see 21 USC 379h(k)).

Table 11 summarizes the waivers and exemptions granted by FDA for PDUFA fees payable in the ten most recent fiscal years, and Table 12 summarizes the amount of fee revenue lost to major exemptions or waiver categories by dollar amount and full application equivalents (FAE).

TABLE 11: EXEMPTION AND WAIVERS AS OF SEPTEMBER 30, 2013

Exempted Application Fees[1]	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Orphan Product	19.5	28.5	23.8	21.3	27.8	23.8	21.8	33.0	36.6	34.6
Previously Submitted	8.0	3.5	6.0	4.5	4.0	7.5	4.0	5.0	0.0	0.0
Total Exemptions	27.5	32.0	29.8	25.8	31.8	31.3	25.8	38.0	36.6	34.6
TOTAL Value of Exemptions	$15,771,250	$21,504,000	$22,830,150	$23,077,150	$37,401,500	$38,975,000	$36,191,625	$58,596,000	$67,306,825	$67,823,450

Exempted Orphan Product and Establishment Fees (new in FY 2008)	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Orphan Product Fee Exemptions	14	16	28	33	30	41
Value of Product Fee Exemptions	$910,420	$1,144,320	$2,232,160	$2,855,160	$2,969,100	$4,033,580
Orphan Establishment Fee Exemptions	5.24	7.45	11.49	16.04	12.14	16.22
Value of Establishment Fee Exemptions	$2,056,963	$3,169,869	$5,252,314	$7,976,082	$6,311,414	$8,538,953
Total Product and Establishment Fee Exemptions	**$2,967,383**	**$4,314,189**	**$7,484,474**	**$10,831,242**	**$9,280,514**	**$12,572,533**

Source: Periodic waiver and exemption data maintained by the CDER Office of Management and fee-exceed-cost waiver data maintained by the Office of Financial Management

[1] Actual number of Exempted Applications received in full fee equivalents

Waived Fees	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
APPLICATIONS1										
Small Business Waivers	17.3	12.0	11.0	14.0	26.0	17.0	21.4	16.5	17.0	11.5
Miscellaneous Waivers (Includes PEPFAR)2	1.0	12.0	13.0	14.0	21.0	10.0	13.1	8.5	5.0	8.5
Value of Waivers Approved	$10,466,375	$16,128,000	$18,417,600	$25,093,600	$55,366,000	$33,674,400	$48,520,696	$38,550,000	$40,513,000	$39,176,000
PRODUCTS										
Waivers Approved	54.5	32.0	22.0	25.8	17.10180	20.89545	15.87816	29.37747	4.00000	7.0
Value of Waivers Approved	$1,965,278	$1,334,720	$926,860	$1,283,844	$1,112,130	$1,494,443	$1,265,807	$2,541,739	$395,880	$688,660
ESTABLISHMENTS										
Waivers Approved	22.5	17.0	12.2	13.1	7.8	2.9	5.7	4.7	1.3	1.6
Value of Waivers Approved	$5,103,000	$4,453,991	$3,223,704	$4,095,372	$3,053,420	$1,215,818	$2,621,489	$2,345,858	$691,733	$848,250
TOTAL Value of Waivers Granted	**$17,534,653**	**$21,916,711**	**$22,568,164**	**$30,472,816**	**$59,531,550**	**$36,384,660**	**$52,407,992**	**$43,437,597**	**$41,600,613**	**$40,712,910**
GRAND TOTAL – Exemptions & Waivers	**$33,305,903**	**$43,420,711**	**$45,398,314**	**$53,549,966**	**$99,900,433**	**$79,673,849**	**$96,084,091**	**$112,864,839**	**$118,187,952**	**$121,108,893**

[1] Actual number of Application Fee Waivers Granted-number of waived applications actually received may vary.

[2] PEPFAR refers to applications for drugs to treat HIV/AIDS excluded from fees under the President's Emergency Plan for AIDS relief.

TABLE 12: DOLLAR VALUE OF MAJOR EXEMPTION AND WAIVER CATEGORIES FOR EACH FISCAL YEAR

Fiscal Year	Exempt Orphan Application Fees		Small Business Application Fees		PEPFAR & Miscellaneous Application Fees	
	Dollar Value	# in FAE	Dollar Value	# in FAE	Dollar Value	# in FAE
2004	$11,183,250	19.500	$9,892,875	17.250	$573,500	1.000
2005	$19,152,000	28.500	$8,064,000	12.000	$8,064,000	12.000
2006	$18,225,750	23.750	$8,441,400	11.000	$9,976,200	13.000
2007	$19,044,250	21.250	$12,546,800	14.000	$12,546,800	14.000
2008	$32,689,500	27.750	$30,628,000	26.000	$24,738,000	21.000
2009	$29,621,000	23.750	$21,202,400	17.000	$12,472,000	10.000
2010	$30,569,625	21.750	$30,042,563	21.3750	$18,476,408	13.146
2011	$50,886,000	33.000	$25,443,000	16.500	$13,107,000	8.500
2012	$67,306,825	36.550	$31,305,500	17.000	$9,207,500	5.000
2013	$67,823,450	34.625	$22,526,200	11.500	$16,649,800	8.500
Total	$346,501,650	270.425	$200,092,738	163.625	$125,811,208	106.146

Fiscal Year	Exempt Orphan Establishment Fees -- Began in FY 2008		Exempt Orphan Product Fees Began in FY 2008	
	Dollar Value	# in Full Est. Fees	Dollar Value	# in Full Product Fees
2008	$2,056,963	5.238	$910,420	14.000
2009	$3,169,869	7.448	$1,144,320	16.000
2010	$5,252,314	11.488	$2,232,160	28.000
2011	$7,976,082	16.042	$2,855,160	33.000
2012	$6,311,414	12.135	$2,969,100	30.000
2013	$8,538,953	16.218	$4,033,580	41.000
Total	$33,305,595	68.569	$14,144,740	162

APPENDIX C: ALLOWABLE AND EXCLUDED COSTS FOR THE PROCESS FOR THE REVIEW OF HUMAN DRUG APPLICATIONS

The FD&C Act as amended defines the "process for the review of human drug applications" and the costs that may be included in that process. Fees may only be spent for activities that are included in this definition, although fee-generating activities are only a small subset of the activities that are included in this definition. The Agency identifies those activities that are applicable to the process for the review of human drug applications in this appendix. In Appendix D, the Agency describes how the costs for the process for the review of human drug applications are developed, based on the allowable activities identified in this appendix.

Because over 96 percent of the amounts obligated by FDA each year are expended within two years, obligations represent an accurate measure of costs.

PDUFA RELATED COSTS

Included Activities

Section 735(6) of the FD&C Act defines in general terms the activities necessary for the review of human drug applications (the "human drug review process"). In summary, costs related to the following process activities have been attributed to the process for the review of human drug applications:

- All investigational new drug review activities, including amendments;
- All review activities for NDAs, BLAs, including supplements and amendments;
- Regulation and policy development activities related to the review of human drug applications;
- Development of product standards for products subject to review and evaluation;
- Meetings between FDA and the sponsor of a covered application or supplement;
- Review of labeling prior to approval of a covered application or supplement and the review of the initial pre-launch advertising;
- Review of post-marketing studies and clinical trials that have been agreed to by sponsors as a condition for approval;
- Inspections of facilities undertaken as part of the review of pending applications or supplements;
- Lot release activities for covered biological products;
- Assay development and validation to ensure batch-to-batch consistency and reliability for covered biological products;
- Monitoring of clinical and other research conducted in connection with the review of human drug applications;
- User Fee Act implementation activities;
- Research related to the human drug review process; and
- Postmarket safety activities with respect to drugs approved under human drug applications or supplements, including the following activities: collecting, developing,

and reviewing safety information on approved drugs, including adverse event reports; developing and using improved adverse event data-collection systems, including information technology systems; developing and using improved analytical tools to assess potential safety problems, including access to external data bases; implementing and enforcing section 505(o) (relating to post-approval studies and clinical trials and labeling changes) and section 505(p) (relating to risk evaluation and mitigation strategies); and carrying out section 505(k)(5) (relating to adverse event reports and postmarket safety activities).

All user-fee-related costs represented by the above activities are collectively referred to in this report as costs for the process for the review of human drug applications.

Section 735(7) of the FD&C Act defines the "costs of resources allocated for the process for the review of human drug applications" as the expenses incurred in connection with this process for:

(A) officers and employees of the FDA, contractors of the FDA, advisory committees, and costs related to such officers, employees, committees, and contracts;

(B) management of information, and the acquisition, maintenance, and repair of computer resources;

(C) leasing, maintenance, renovation, and repair of facilities and acquisition, maintenance, and repair of fixtures, furniture, scientific equipment, and other necessary materials and supplies; and

(D) collecting user fees under section 736 of the FD&C Act and accounting for resources allocated for the review of human drug applications and supplements.

Excluded Activities

The FD&C Act excludes costs related to the following:

Excluded Products

- Generic drugs
- Over-the-counter drugs not associated with an NDA or NDA supplement
- Large volume parenteral drug products approved before September 1, 1992
- Allergenic extract products
- Whole blood or a blood component for transfusion
- In vitro diagnostic biologic products
- Certain drugs derived from bovine blood

Excluded Process Activities

- Enforcement policy development not related to sections 505(o) and (p) of the FD&C Act
- Post-approval compliance activities not related to the enforcement of sections 505(o) and (p) of the FD&C Act
- Advertising review activities once marketing of the product has begun
- Inspections unrelated to the review of covered applications, unless undertaken for the enforcement of sections 505(o) and (p) of the FD&C Act
- Research unrelated to the human drug review process

APPENDIX D: DEVELOPMENT OF COSTS FOR THE PROCESS FOR THE REVIEW OF HUMAN DRUG APPLICATIONS

GENERAL METHODOLOGY

The costs associated with the process for the review of human drug applications are based on obligations recorded within CDER, CBER, ORA, and HQ. These organizations correspond to the cost categories presented as follows:

Cost Category	FDA Organization
Costs for the Review of NDAs, BLAs, and Supplements	CDER
Costs for the Review of BLAs and Supplements	CBER
Field Inspection and Investigation Costs	ORA
Agency General and Administrative Costs	HQ

The costs for each component are shown in tables 7 and 8 on pages 11-12. They were derived using time-reporting systems in CDER, CBER, and ORA, and were calculated for HQ as described in more detail in this appendix. Using the definitions of costs and activities included in the process for the review of human drug applications in PDUFA, as explained in the discussion in Appendix C, the cost categories within each organization listed above were identified as parts of the human drug application review process.

CENTER COSTS

Costs of the human drug application review program are tracked for each organizational component in CDER and CBER, usually at the division level. Most FDA components involved in the process perform a mixture of activities – some within the definition of the process for the review of human drug applications, and some not. FDA groups its organizational components into three categories:

- direct review and laboratory
- indirect review and support
- Center-wide costs

The allocation of costs for each category is discussed below.

Direct Review and Laboratory

Employees in all components of CDER and CBER, other than those noted below as Center indirect review and support components, are required to report their time for a total of eight weeks (two weeks per quarter) each fiscal year in activity-based time reporting systems. The activities in the systems differentiate between time spent on the process for the review of human drug applications and all other time, so that time reported can be separated into allowable and excluded activities as defined by PDUFA.

FDA is a payroll-intensive organization – about 52 percent of all FDA funds pay for employee salaries and benefits, and almost all other costs are directly supporting these employees. Thus the average percentage of time reported on human drug review process activities in CDER and CBER is applied to all costs incurred for the entire fiscal year in those Centers. This method provides an estimate of each cost centers' costs incurred while conducting human drug review activities in FY 2013.

Indirect Review and Support

Indirect review and support components provide the infrastructure for the review process. In CDER, these components include portions of the Office of the Center Director, the Office of Strategic Programs, the Office of Management, the Office of Communications, and the Office of Executive Programs. In CBER, these components include portions of the Office of the Center Director, Office of Management, and the Office of Communications, Outreach and Development. Most employees of these components do not report their time.

FDA assumes the time of management and administrative personnel supporting the process for the review of human drug applications is equivalent to the proportion of time Center employees in direct review and laboratory components spend on human drug review process activities. Thus the average percentage of time expended on human drug review activities for all direct review and laboratory components in FY 2013 was applied to all costs incurred for the entire fiscal year by the indirect review and support components.

Center-Wide Costs

A number of Center-wide and Agency-wide expenses are paid from the central accounts of the Center or of FDA rather than from funds allocated to a specific Center or division or office within the Center. These costs include rent, telecommunications and utility costs, some computer equipment and support costs, and costs of the Office of Shared Services, which supports all FDA programs and activities. A percentage of these Center and FDA-wide costs are chargeable to the process for the review of human drug applications. That percentage is either a specific amount that is supported by independent documentation or is the amount of time reported for allowable activities (direct and indirect) in the Center, as a percentage of total time reported for all Center direct and indirect activities.

As in prior years, resources expended in FY 2013 by the Office of Shared Services in supporting the human drug application review process are reported as if they were incurred in CDER, CBER, ORA, or HQ.

FIELD INSPECTION AND INVESTIGATION COSTS

ORA incurs all field inspection, investigation, and laboratory analyses costs. ORA costs are incurred in both district offices (the "field") and headquarters offices, which are tracked in the Field Accomplishment and Compliance Tracking System (FACTS). FACTS is a time and activity tracking system that captures time spent in a variety of categories, including pre-approval inspections of manufacturing facilities, investigations of clinical studies, and analytical testing of samples, which are all part of the review process for human drug applications.

Total direct hours reported in FACTS are used to calculate the total number of FTEs required by ORA to perform these activities. In addition to the direct time, an allocation of support time is also included to represent the work done by ORA administrative and management personnel. The Agency then multiplies the total number of FTEs used in the process for the review of human drug applications by the average salary and benefits cost in ORA to arrive at ORA salary and benefit costs for work that is a part of the process for the review of human drug applications as defined in PDUFA. The final step is to allocate ORA obligations for operations and rent to the human drug review activities based upon the ratio of user fee related FTEs to total ORA FTEs.

Table 13 summarizes the calculation of ORA costs for the process for the review of human drug applications for FY 2012 and FY 2013.

TABLE 13: OFFICE OF REGULATORY AFFAIRS COSTS OF THE REVIEW PROCESS FOR HUMAN DRUG APPLICATIONS AS OF SEPTEMBER 30, 2012 AND 2013

COST COMPONENT	FY 2012	FY 2013
FTE Utilized	163	147
ORA Average Salary and Benefits	$114,268	$117,355
Total Salary and Benefits	$18,625,684	$17,251,185
Operating and Other Costs	$18,560,801	$14,257,051
TOTAL	**$37,186,485**	**$31,508,236**

ORA costs for the process for the review of human drug applications described above include total process costs, including costs paid from appropriations and costs paid from fee revenues.

AGENCY GENERAL AND ADMINISTRATIVE COSTS

The Agency general and administrative costs include all costs incurred in FDA's HQ that are attributable to the Office of the Commissioner and all other FDA headquarters components that are not Centers or the Office of Regulatory Affairs. For the purpose of these calculations, HQ is considered to comprise the following offices:

- Immediate Office of the Commissioner
- Office of the Counselor to the Commissioner
- Office of Legislation
- Office of Policy and Planning
- Office of External Affairs
- Office of the Executive Secretariat
- Office of the Chief Counsel
- Office of Minority Health
- Office of Women's Health
- Office of the Chief Scientist (excluding the National Center for Toxicological Research)
- Office of Operations
- Office of Foods and Veterinary Medicine (excluding the Center for Food Safety and Applied Nutrition and the Center for Veterinary Medicine)
- Office of Medical Products and Tobacco (excluding the Center for Drug Evaluation and Research, the Center for Biologics Evaluation and Research, the Center for Device and Radiological Health, and the Center for Tobacco Products)
- Office of Global Regulatory Operations and Policy (excluding the Office of Regulatory Affairs)

In summary, the HQ costs include all of FDA except for the six product-oriented centers, the Office of Regulatory Affairs, and the National Center for Toxicological Research.

The HQ costs applicable to the process for the review of human drug applications were calculated using a method prescribed by the Division of Cost Determination Management, Office of Finance, Office of the Secretary, Department of Health and Human Services. The method uses the percentage derived by dividing total HQ costs by the total FDA salary expenses (excluding benefits) after subtracting the salary expense (excluding benefits) from HQ. That percentage is then multiplied by the total salaries (excluding benefits) applicable to the process for the review of human drug applications in CDER, CBER, and ORA to derive the applicable Agency general and administrative costs.

Using this methodology, FDA dedicated $81,794,065 in general and administrative costs to the human drug review process in FY 2013. The costs are total costs obligated from appropriations and user fees. FDA strives to maintain a low overhead cost for the process for the review of human drug applications. General and administrative costs are approximately 8.5 percent of FY 2013 total human drug review process costs.